



Planet Depos
We Make It Happen™

FILED
CIVIL PROCESSING

2022 AUG 12 A 11: 07

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

Transcript of Motion Hearing

Date: January 22, 2021

Case: Depp, II -v- Heard

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

23411

FILED

AUG 12 2022

JOHN T. FREY
Clerk of the Circuit Court
of Fairfax County, VA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

-----x

JOHN C. DEPP, II, :

Plaintiff, :

v. : Civil Action No.

AMBER LAURA HEARD, : CL-2019-0002911

Defendant. :

-----x

Hearing before THE HONORABLE BRUCE D. WHITE

Conducted Virtually

Friday, January 22, 2021

12:11 p.m. EST

Job No.: 348984

Pages: 1 - 21

Reported By: Paul P. Smakula

1 Hearing before THE HONORABLE BRUCE D. WHITE,
2 conducted virtually:

3

4

5

6

7

8

9 Pursuant to agreement, before Paul P. Smakula,
10 Notary Public in and for the State of Maryland.

11

12

13

14

15

16

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF DEPP:

BENJAMIN G. CHEW, ESQUIRE
BROWN RUDNICK LLP
601 Thirteenth Street Northwest
Suite 600
Washington, D.C. 20005
(202) 536-1785

ON BEHALF OF DEFENDANT HEARD:

ELAINE CHARLSON BREDEHOFT, ESQUIRE
CHARLSON, BREDEHOFT, COHEN & BROWN
11260 Roger Bacon Drive
Suite 201
Reston, Virginia 20190
(703) 318-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P R O C E E D I N G S

THE COURT: It looks like the issue before me is how do we decide how attorneys' fees are going to be handled. And I sort of gather that both of you understand and agree that that is a matter for determination by the Court, not the jury; is that right?

MR. CHEW: Yes, Your Honor.

MS. BREDEHOFT: Yes and no, Your Honor.

Good afternoon.

THE COURT: I knew that was too easy. Go ahead.

MS. BREDEHOFT: I agree that -- I think we both agree that it should be decided after this jury trial. The part that's -- and Your Honor will find this next week, there's two prongs to the anti-SLAPP statute. The first prong is a matter of public concern, which Your Honor will be handling next week. The second prong is whether the statements were made with a reckless disregard or knowing falsity, which is a jury issue. And Your Honor will see that in our briefing next week

1 and our argument. So it's not -- it's not
2 completely a Court determination. If Your Honor
3 were to rule that Ms. Heard's statements were not
4 a matter of public concern, which I hope Your
5 Honor does not, that would end the inquiry for
6 attorneys' fees. So under that circumstance that
7 would be, and we believe that that is a Court
8 determination. So that's why I said it's not that
9 easy. Does Your Honor want me to continue or?

10 THE COURT: Well, if all of this is going
11 to rely upon what I rule upon next week, why are
12 we bothering to do it today?

13 MS. BREDEHOFT: There's a number of
14 reasons, Your Honor. If Your Honor rules in our
15 favor next week and it's just one issue that we
16 believe Your Honor -- and Your Honor may have to
17 decide that it needs an evidentiary -- Your Honor
18 needs an evidentiary hearing, so Your Honor may
19 not rule on it next week. But if Your Honor rules
20 in our favor that the statements that were made in
21 the op-ed in the Washington Post were of public
22 concern involving first amendment rights, then

1 attorneys' fees is triggered. And then, Your
2 Honor, we come up to February 16th, that's when we
3 would have to have our expert witness give a
4 designation. So we don't have a lot of time here
5 if we have to go to the old route. That's why
6 they made 3:25.

7 Your Honor will note the attachment that
8 we had to our brief was the consent order that
9 Mr. Chew and I had entered into back in September
10 which said we agree attorneys' fees should be
11 submitted to the Court afterwards. We had a
12 process that's very typical in this court under
13 3:25(d), that whoever prevails -- and at that time
14 both were in play on anti-SLAPP, I think that
15 Mr. Chew has admitted that the attorneys' fees are
16 not in play right now for Mr. Depp, it's just
17 Ms. Heard left.

18 So if the jury finds the reckless -- not
19 reckless, not false, and the Court then says
20 attorneys' fees and costs are warranted, then we
21 would submit those within 14 days, they would have
22 14 days to respond, we would have 7 days. If the

1 Court wants a hearing, they can have a hearing,
2 either side can request a hearing, and the Court
3 can make a different motion. We were all
4 completely on board with that process. We had
5 signed and submitted the order to Your Honor.
6 Then what happened was Your Honor told us during
7 the calendar control that Your Honor was going to
8 be retiring on July 1st. And so we may want to
9 rethink that because if the trial's not done, you
10 know, earlier and even with that time frame it
11 would bump us past July 1. So Mr. Chew and I went
12 back and hashed through a whole lot of different
13 scenarios over the last several months and have
14 been unable to reach agreement on that.

15 In the meantime, Your Honor ruled on the
16 demurrers and plea in bars which took out the
17 opportunity for Mr. Depp to obtain attorneys'
18 fees, and that's conceded in the brief here by
19 Mr. Depp's counsel. So it's just Ms. Heard at
20 this point pending later decisions. I don't know
21 why there should be any distinction between what
22 we agreed to in September and what I've submitted

1 and asked for the Court to make the determination
2 on now, just submit these attorneys' fees
3 afterwards.

4 Now, Mr. Chew has made a few arguments in
5 his brief, and I think they're very short and I
6 think I can go through them and try to handle this
7 quickly. First, Mr. Depp's counsel argued that
8 we're no longer entitled to attorneys' fees
9 because of the counterclaim. But as Your Honor
10 may recall, Your Honor said that that doesn't
11 preclude it, that we have it pleaded in our
12 defense, in fact we have it specifically pleaded
13 in your plea in bar, which is what Your Honor is
14 going to be ruling on next week, so it's not
15 correct that by taking out the counterclaim that
16 that took out the ability to get attorneys' fees
17 under anti-SLAPP.

18 The second thing he said is that he agreed
19 that it should be post trial. So we're both in
20 agreement that it should not be submitted now, it
21 should be post trial. But, Your Honor, the
22 problem is absent a ruling by Your Honor on a

1 procedure for 3:25(d) for a plea agreement by us,
2 the default is I have to have an expert by
3 February 16th and we have to have a declaration on
4 attorneys' fees, and we have to put it on all the
5 way through this process.

6 The last thing that is argued by Mr. Depp
7 is that now he believes because attorneys' fees
8 will likely be in excess of seven figures that we
9 should have an entire year after the determination
10 is made. So if the Court determines that it's of
11 public concern, if the jury determines that
12 Ms. Heard's statements were not made recklessly
13 with or with falsity and attorneys' fees are
14 warranted, now Mr. Chew says we should have a
15 whole jury trial not less than six months and not
16 more than 12 months away after the decision is
17 made and all process of layperson witnesses and
18 expert witnesses, which really isn't practical and
19 doesn't make sense.

20 The Court's allowed to be able to have its
21 own process under 3:25(d). And in fact, Mr. Chew
22 agreed to that process when his potential

1 attorneys' fees may have been in play. So we're
2 asking for all the reasons we said in our brief
3 and what I've just argued here today, Your Honor,
4 to enter the order that we submitted, which tracks
5 almost exactly the consent order that we signed
6 back in September, but of course it's just for
7 Ms. Heard at this point and still has -- the jury
8 has to make the determination, the Court has to
9 make the determinations, in that process.

10 THE COURT: Mr. Chew.

11 MR. CHEW: Good afternoon, Your Honor.
12 Ben Chew for plaintiff, Mr. Depp. And I was a
13 little confused by Ms. Bredehoft's position, so
14 I'm trying to --

15 THE COURT: I'm going to lean into the
16 computer. I don't want that to be viewed as me
17 paying more attention to you than I did to her,
18 but your volume is not as loud.

19 MR. CHEW: Thank you, Your Honor.

20 MS. BREDEHOFT: I worked on that this
21 morning.

22 MR. CHEW: As a threshold matter, we do

1 believe defendants' motion will be moot because
2 neither party is entitled to attorneys' fees.
3 First, as Your Honor will recall, by letter
4 opinion dated January 4th, 2021, the Court
5 sustained Mr. Depp's demurrer to Count I of
6 Ms. Heard's counterclaims, which requested
7 attorneys' fees. Second, by the same letter
8 opinion at page 10, Your Honor denied Mr. Depp's
9 plea in bar on anti-SLAPP and ruled that he's not
10 entitled to anti-SLAPP immunity.

11 And third, by that very same logic and the
12 logic of the Court's letter opinion of March 27th,
13 2020, particularly at pages six through eight, the
14 Court should deny the last vestige of Ms. Heard's
15 plea in bar and find that she is not entitled to
16 anti-SLAPP immunity either, just like Mr. Depp.
17 That motion is set for next Friday. As Mr. Depp
18 will argue, Ms. Heard is not entitled to
19 anti-SLAPP immunity for two distinct and
20 independent reasons.

21 One, her statements do not regard matters
22 of public concern protected by the first

1 amendment, but rather imply an assertion of
2 objective fact, in particular that he is a
3 wife-beater. Quoting Pendleton versus Newsome,
4 290 Virginia 162, 2015, just a very short quote,
5 Your Honor, because defamatory speech falls
6 outside the protection of the first amendment, the
7 a first amendment analysis is in apposite in a
8 case in which a plaintiff must allege and
9 ultimately prove that the defendant intended his
10 words to express a defamatory innuendo, that the
11 words actually did so, and that the plaintiff was
12 actually defamed thereby. And that's 290 Virginia
13 at 174 discussed at pages six through eight of the
14 Court's March 27th, 2020, letter opinion.

15 And for the second independent reason, as
16 Ms. Bredehoft just referred to, Ms. Heard made her
17 statements with knowledge of falsity, as Mr. Depp
18 alleges in paragraphs 6, 23, 62 through 68 of his
19 complaint, and per Steele versus Goodman and
20 page 10 of Your Honor's letter opinion of
21 January 4th, that means that Ms. Heard is not
22 entitled to anti-SLAPP immunity either. And just

1 quote -- this is the last one, Your Honor.
2 Quoting Your Honor's letter opinion at page 10,
3 quote, Ms. Heard has alleged sufficient facts in
4 her counterclaims to demonstrate that Mr. Depp may
5 have made these statements with actual or
6 constructive knowledge or with reckless disregard
7 for whether they are false, unquote.

8 And on that basis, Your Honor ruled that
9 Mr. Depp is not entitled to anti-SLAPP immunity.
10 The same thing applies with Mr. Depp. Mr. Depp
11 had even more allegations in his complaint that
12 Ms. Heard acted with malice. This is an unusual
13 case, in which Ms. Heard obviously knows that what
14 she said was not true. But as to the instant
15 motion, Your Honor, Mr. Depp agrees that the Court
16 should make the entitlement as to the -- strike
17 that.

18 Mr. Depp agrees that it is the Court, not
19 a jury that should make the decision as to whether
20 either party is entitled to attorneys' fees.
21 That's how I read Ms. Bredehoft's brief. She
22 seems to be changing that. We do still seem to

1 agree that the quantum of those fees should not be
2 a part of the jury trial starting on May 17th, and
3 I agree with Ms. Bredehoft, we don't want to be
4 identifying experts on attorneys' fees along with
5 the other myriad experts we're going to do.

6 Where we disagree on that is to timing.
7 Ms. Bredehoft is asking the Court to give us 14
8 days after trial in which to analyze what will
9 probably be thousands and thousands of pages of
10 billing records. And have our expert look at that
11 and analyze that within four days -- 14 days. And
12 then she gets 7 days to reply. And then a judge
13 will have the discretion to decide whether to have
14 a hearing on it.

15 And I would respectfully submit, first of
16 all, this is going to be moot, we believe. Second
17 of all, to the extent it's not moot, this will be
18 a huge undertaking. This will be attorneys' fees
19 well into the seven figures that will have to be
20 analyzed in the unlikely event that it becomes
21 relevant. So therefore, we proposed a schedule, a
22 hypothetical schedule that would require the

1 prevailing party to produce all of his or her
2 records within 30 days, have a 60-day limited
3 discovery period on that, 30 days after that for
4 experts, and then yes, a jury trial within 6 to
5 12 months after that.

6 Because this is -- this will be a
7 substantial matter, this is not like attorneys'
8 fees for a discovery motion. This would be a
9 substantial undertaking that would require experts
10 to ascertain reasonableness and to parse what fees
11 are recoverable and what fees are not. But in any
12 event, we believe and we hope that this will all
13 be mooted by the Court's decision next week.

14 MS. BREDEHOFT: Your Honor, if I may?

15 THE COURT: Ms. Bredehoft, go ahead.

16 MS. BREDEHOFT: Thank you. Your Honor,
17 I'm not going to -- we have very good arguments
18 for the issues next week that Your Honor will
19 hear, and I'm not going to address those right
20 now. I feel very confident in those issues and
21 confident we can argue those and put those before
22 the Court next week. What I'm not hearing, Your

1 Honor, is what downside there is to Your Honor
2 entering an order today that provides for the
3 adjudication of the attorneys' fees. It protects
4 us because if Your Honor -- Ms. Heard -- because
5 if Your Honor rules that -- either that there has
6 to be an evidentiary hearing on the matters of the
7 public concern or that the op-ed statements were
8 matters of public concern -- we're going to have
9 that well-cited for Your Honor, then we definitely
10 have attorneys' fees in play.

11 And so if we don't have an order in, we
12 have to have an expert by February 16th. That's
13 the default, Your Honor, we have no choice. We
14 have to go through your process here on the end of
15 it. Now, Mr. Chew hasn't indicated why when
16 Mr. Depp's attorneys' fees might have been in play
17 or Ms. Heard's, and we didn't know why it was okay
18 to do the 14 days, 14 days, 7 then with the Court
19 and why that's changed at all. And I'm happy to
20 extend that if, you know, it needs to be three
21 weeks instead or four weeks, but these parties
22 have to be done with this case, Your Honor.

1 And after this ruling comes in on the
2 trial, we need to get the attorneys' fees
3 adjudicated promptly so that these parties can be
4 done. They desperately need to be done. And
5 there's no good reason to go all the way through
6 and have fact discovery, attorney -- expert
7 discovery, and a jury trial 6 to 12 months out.
8 And frankly, Your Honor, given COVID, I can't
9 imagine the Court would be able to set a jury
10 trial 6 to 12 months out in May after dealing with
11 the other backlog. It doesn't make any sense at
12 that point then it would make sense to go ahead
13 and just adjudicate them now in the old fashioned
14 way and put the attorneys' fees out now with the
15 experts, which Mr. Chew seems to agree that would
16 not make sense. But that would make more sense
17 than putting it out then.

18 So I would ask Your Honor to enter the
19 order that we have submitted, the proposed order.
20 It tracks the language of the consent order that
21 we agreed to before, it provides an orderly
22 process. If Mr. Chew wants to extend it from

1 14 days to 21 days or 30 days, I think that would
2 still be perfectly reasonable, but the parties do
3 this all the time, and I think they're perfectly
4 capable of doing it quickly at that time.

5 THE COURT: All right. The only ruling
6 I'm going to make today with regards to that is
7 that the attorneys' fees issue is not to be tried
8 in the corpus of the case starting on May 17th and
9 the attorneys' fees experts need not be identified
10 by February 11th or 15th or whatever date that
11 was. If you all want to give an order that makes
12 that ruling, that would be fine.

13 MR. CHEW: Thank you very much, Your
14 Honor.

15 MS. BREDEHOFT: May I ask a clarification?

16 THE COURT: I'd be shocked if you did not.

17 MS. BREDEHOFT: I'm sorry, I just want to
18 make sure that we get it right. So we don't have
19 to identify an expert no matter what on
20 February 16th, and it will not be tried in the
21 May 17 trial, and Your Honor will rule at some
22 point later depending upon this issue if we bring

1 it later, would that be correct?

2 THE COURT: The attorneys' fees will not
3 be tried in the corpus of the trial on May 17th.
4 That much I think I've said that twice. And
5 attorneys' fees experts need not be identified by
6 that February 16th or 17th cutoff date. That's
7 all I'm ruling.

8 MS. BREDEHOFT: All right. Thank you,
9 Your Honor.

10 MR. CHEW: Thank you, Your Honor.

11 THE COURT: All right. Sorry if that was
12 confusing to you.

13 MS. BREDEHOFT: Well, what I don't know is
14 Your Honor, I don't think is denying without -- I
15 think Your Honor is denying without prejudice in
16 making that ruling, that's what I'm just trying to
17 figure out.

18 THE COURT: I don't want that in the
19 order.

20 MS. BREDEHOFT: Right. That's what I
21 thought.

22 THE COURT: I want the order just what I

1 said. I don't want people slipping things into
2 orders like we went through this months ago when
3 things are denied or granted. I've made a limited
4 ruling, so yes, I am going to ask for
5 clarification.

6 MS. BREDEHOFT: And I appreciate that very
7 much, Your Honor. Thank you.

8 THE COURT: Thanks.

9 MS. BREDEHOFT: Have a great weekend.

10 THE COURT: Thank you. Same to you all.

11 MR. CHEW: Thanks.

12 (Off the record at 12:29 p.m.)

13

14

15

16

17

18

19

20

21

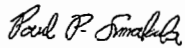

22

1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, PAUL P. SMAKULA, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true
5 and correct record of the testimony given; that
6 said testimony was taken by me stenographically
7 and thereafter reduced to typewriting under my
8 direction; that reading and signing was not
9 requested; and that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.

13
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 and affixed my notarial seal this 22nd day of
16 January, 2021.

17
18 My commission expires: June 18, 2023.

19
20  

21 NOTARY PUBLIC IN AND FOR
22 THE STATE OF MARYLAND